
HOUSE BILL No. 1970

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.5.

Synopsis: Usury rates. Defines usury as interest that exceeds the prime rate plus either 8% for oral contracts or 10% for written contracts. Prevents the enforcement of usurious credit terms when the lender is not a corporation or other business entity. Makes conforming changes.

Effective: Upon passage; July 1, 2003.

Alderman

January 23, 2003, read first time and referred to Committee on Financial Institutions.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1970

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.5-0.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]:

4 **Chapter 0.5. Legal Rates of Interest on Loans and**
5 **Forbearances, Usurious Interest**

6 **Sec. 1. The interest on loans or forbearance of money, goods, or**
7 **things in action shall be as follows:**

8 (1) When the parties do not agree on the rate, interest shall be
9 the sum of the prime rate at the largest bank in Indiana, as
10 determined by the director of the department of financial
11 institutions on January 1, April 1, July 1, or October 1,
12 whichever most closely precedes the date of the agreement,
13 plus eight percent (8%).

14 (2) By agreement in writing signed by the party to be charged,
15 any obligor other than a corporation or other business entity
16 (as defined in IC 23-1-40-8(a)) may lawfully agree to pay any
17 rate of interest not in excess of the sum of the prime rate at

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the largest bank in Indiana, as determined by the director of the department of financial institutions on January 1, April 1, July 1, or October 1, whichever most closely precedes the date of the agreement, plus ten percent (10%).

(3) By agreement in writing signed by a representative of a corporation or other business entity, a corporation or other business entity (as defined in IC 23-1-40-8(a)) may lawfully agree to pay any rate of interest.

Sec. 2. If a greater rate of interest than is allowed under section 1 of this chapter is contracted for, the contract is void as to the usurious rate of interest. If it appears that interest calculated at a higher rate than that under section 1(2) of this chapter has been directly or indirectly contracted for by an obligor other than a corporation:

(1) the excess of the interest over the rate under section 1(1) of this chapter is considered usurious and illegal; and

(2) in an action on a contract affected by such usury, the excess over the legal interest may be recouped by the debtor if the excess has been reserved or paid before the action is brought.

SECTION 2. IC 24-4.5-2-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 201. Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts-(1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the amount financed which is three hundred dollars (\$300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed which is more than three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the amount financed which is more than one thousand dollars (\$1,000); or

(b) twenty-one percent (21%) per year on the unpaid balances of

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1 ~~the amount financed.~~
 2 **the current maximum rate calculated under IC 24-4.5-0.5.**

3 (3) This section does not limit or restrict the manner of contracting
 4 for the credit service charge, whether by way of add-on, discount, or
 5 otherwise, so long as the rate of the credit service charge does not
 6 exceed that permitted by this section. If the sale is precomputed:

7 (a) the credit service charge may be calculated on the assumption
 8 that all scheduled payments will be made when due; and

9 (b) the effect of prepayment is governed by the provisions on
 10 rebate upon prepayment (IC 24-4.5-2-210).

11 (4) For the purposes of this section, the term of a sale agreement
 12 commences with the date the credit is granted or, if goods are delivered
 13 or services performed more than thirty (30) days after that date, with
 14 the date of commencement of delivery or performance except as set
 15 forth below:

16 (a) Delays attributable to the customer. Where the customer
 17 requests delivery after the thirty (30) day period or where delivery
 18 occurs after the thirty (30) day period for a reason attributable to
 19 the customer (including but not limited to failure to close on a
 20 residence or failure to obtain lease approval), the term of the sale
 21 agreement shall commence with the date credit is granted.

22 (b) Partial Deliveries. Where any portion of the order has been
 23 delivered within the thirty (30) day period, the term of the sale
 24 agreement shall commence with the date credit is granted.

25 Differences in the lengths of months are disregarded and a day may be
 26 counted as one-thirtieth (1/30) of a month. Subject to classifications
 27 and differentiations the seller may reasonably establish, a part of a
 28 month in excess of fifteen (15) days may be treated as a full month if
 29 periods of fifteen (15) days or less are disregarded and that procedure
 30 is not consistently used to obtain a greater yield than would otherwise
 31 be permitted.

32 (5) Subject to classifications and differentiations the seller may
 33 reasonably establish, ~~he~~ **the seller** may make the same credit service
 34 charge on all amounts financed within a specified range. A credit
 35 service charge so made does not violate subsection (2) if:

36 (a) when applied to the median amount within each range, it does
 37 not exceed the maximum permitted by subsection (2); and

38 (b) when applied to the lowest amount within each range, it does
 39 not produce a rate of credit service charge exceeding the rate
 40 calculated according to paragraph (a) by more than eight percent
 41 (8%) of the rate calculated according to paragraph (a).

42 (6) Notwithstanding subsection (2), the seller may contract for and

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1 receive a minimum credit service charge of not more than thirty dollars
2 (\$30).

3 ~~(7) The amounts of three hundred dollars (\$300) and one thousand~~
4 ~~dollars (\$1,000) in subsection (2) are subject to change pursuant to the~~
5 ~~provisions on adjustment of dollar amounts (IC 24-4.5-1-106).~~

6 ~~(8)~~ (7) The amount of thirty dollars (\$30) in subsection (6) is subject
7 to change under the provisions on adjustment of dollar amounts
8 (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the
9 Reference Base Index to be used under this subsection is the Index for
10 October 1992.

11 SECTION 3. IC 24-4.5-2-602 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 602. (1) A "consumer
13 related sale" is a sale of goods, services, or an interest in land which is
14 not subject to the provisions of this article applying to consumer credit
15 sales and in which the amount financed does not exceed fifty thousand
16 dollars (\$50,000) if the buyer is a person other than an organization.

17 (2) With respect to a consumer related sale not made pursuant to a
18 revolving charge account, the parties may contract for an amount
19 comprising the amount financed and a credit service charge not in
20 excess of ~~twenty-one percent (21%) per year~~ **the current maximum**
21 **rate determined under IC 24-4.5-0.5** calculated according to the
22 actuarial method on the unpaid balances of the amount financed.

23 (3) With respect to a consumer related sale made pursuant to a
24 revolving charge account, the parties may contract for a credit service
25 charge not in excess of that permitted by the provisions on credit
26 service charge for revolving charge accounts (IC 24-4.5-2-207).

27 SECTION 4. IC 24-4.5-2-604 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 604. Limitation on
29 Default Charges in Consumer Related Sales (1) The agreement with
30 respect to a consumer related sale may provide for only the following
31 charges as a result of the buyer's default:

32 (a) reasonable attorney's fees and reasonable expenses incurred in
33 realizing on a security interest;

34 (b) deferral charges not in excess of ~~twenty-one percent (21%) per~~
35 ~~year of~~ **the current maximum rate under IC 24-4.5-0.5 applied**
36 **to** the amount deferred for the period of deferral; and

37 (c) other charges that could have been made had the sale been a
38 consumer credit sale.

39 (2) A provision in violation of this section is unenforceable.

40 SECTION 5. IC 24-4.5-3-201, AS AMENDED BY P.L.163-1999,
41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2003]: Sec. 201. Loan Finance Charge for Consumer Loans

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other than Supervised Loans— (1) Except as provided in subsections (6) and (8), with respect to a consumer loan other than a supervised loan (IC 24-4.5-3-501), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding ~~twenty-one percent (21%)~~ **per year on the current maximum rate under IC 24-4.5-0.5** applied to the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving loan account:

(a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is one and three-fourths percent (1 3/4%) of an amount no greater than:

(i) the average daily balance of the debt;

(ii) the unpaid balance of the debt on the same day of the billing cycle; or

(iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual percentage

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rate if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to one-twelfth (1/12) the maximum annual percentage rate as the number of days in the billing cycle bears to thirty (30); and (c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents (\$0.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents (\$0.50) which bears the same relation to fifty cents (\$0.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of IC 24-4.5-3-202).

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

- (a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and
- (b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30).

(7) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

(8) In addition to the loan finance charge provided for in this section, a lender may contract for the following:

- (a) With respect to a consumer loan that is not made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the loan amount.
- (b) With respect to a consumer loan that is made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the line of credit that was contracted for.

(9) The charges provided for in subsection (8):

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- (a) are not subject to refund or rebate;
- (b) are not permitted if a lender makes a settlement charge under IC 24-4.5-3-202(d)(ii); and
- (c) are limited to two percent (2%) of the part of the loan that does not exceed two thousand dollars (\$2,000), if the loan is not primarily secured by an interest in land.

Notwithstanding subdivision (a), if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender within three (3) months after the date of the prior loan, the lender may charge a loan origination fee only on that part of the new loan not used to pay the amount due on the prior loan, or in the case of a revolving loan, the lender may charge a loan origination fee only on the difference between the amount of the existing credit line and the increased credit line. This subsection does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyance, and similar documents under IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in subsection (8).

SECTION 6. IC 24-4.5-3-501 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 501. Definitions:

(1) "Supervised loan" means a consumer loan in which the rate of the loan finance charge exceeds ~~twenty-one percent (21%) per year~~ **the rates under IC 24-4.5-0.5** as determined according to the provisions on loan finance charge for consumer loans (IC 24-4.5-3-201).

(2) "Supervised lender" means a person authorized to make or take assignments of supervised loans.

SECTION 7. IC 24-4.5-3-508 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 508. Loan Finance Charge for Supervised Loans ~~†~~ (1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, may not exceed the ~~equivalent of the greater of either of the following:~~

- (a) the total of:
 - (i) ~~thirty-six percent (36%) per year~~ on that part of the unpaid balances of the principal which is three hundred dollars (\$300) or less;
 - (ii) ~~twenty-one percent (21%) per year~~ on that part of the unpaid balances of the principal which is more than three hundred dollars (\$300) but does not exceed one thousand

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dollars (\$1,000); and
 (iii) fifteen percent (15%) per year on that part of the unpaid
 balances of the principal which is more than one thousand
 dollars (\$1000); or
 (b) twenty-one percent (21%) per year on the unpaid balances of
 the principal.

current maximum rate calculated under IC 24-4.5-0.5.

(3) This section does not limit or restrict the manner of contracting
 for the loan finance charge, whether by way of add-on, discount, or
 otherwise, so long as the rate of the loan finance charge does not
 exceed that permitted by this section. If the loan is precomputed,

(a) the loan finance charge may be calculated on the assumption
 that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on
 rebate upon prepayment (IC 24-4.5-3-210).

(4) The term of a loan for the purposes of this section commences
 on the date the loan is made. Differences in the lengths of months are
 disregarded and a day may be counted as one-thirtieth (1/30) of a
 month. Subject to classifications and differentiations the lender may
 reasonably establish, a part of a month in excess of fifteen (15) days
 may be treated as a full month if periods of fifteen (15) days or less are
 disregarded and that procedure is not consistently used to obtain a
 greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations, the lender may
 reasonably establish and make the same loan finance charge on all
 principal amounts within a specified range. A loan finance charge does
 not violate subsection (2) if:

(a) when applied to the median amount within each range, it does
 not exceed the maximum permitted in subsection (2), and

(b) when applied to the lowest amount within each range, it does
 not produce a rate of loan finance charge exceeding the rate
 calculated according to paragraph (a) by more than eight percent
 (8%) of the rate calculated according to paragraph (a).

~~(6) The amounts of three hundred dollars (\$300) and one thousand
 dollars (\$1,000) in subsection (2) and thirty dollars (\$30) in subsection
 (7) are subject to change pursuant to the provisions on adjustment of
 dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of
 thirty dollars (\$30), the Reference Base Index to be used is the Index
 for October 1992.~~

~~(7)~~ (6) With respect to a supervised loan not made pursuant to a
 revolving loan account, the lender may contract for and receive a
 minimum loan finance charge of not more than thirty dollars (\$30).

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SECTION 8. IC 24-4.5-3-604 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 604. Limitation on Default Charges in Consumer Related Loans (1) The agreement with respect to a consumer related loan may provide for only the following charges as a result of the debtor's default:

(a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(b) deferral charges not in excess of ~~twenty-one percent (21%) per year of the current maximum rate under IC 24-4.5-0.5 applied~~ to the amount deferred for the period of deferral; and

(c) other charges that could have been made had the loan been a consumer loan.

(2) A provision in violation of this section is unenforceable.

SECTION 9. [EFFECTIVE UPON PASSAGE] **This act does not affect:**

(1) rights or liabilities accrued;

(2) penalties incurred;

(3) crimes committed; or

(4) proceedings begun;

before the effective date of this act. Those rights, liabilities, penalties, crimes, and proceedings continue and shall be imposed and enforced under prior laws as if this act had not been enacted.

SECTION 10. **An emergency is declared for this act.**

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